D.B. Central Excise Appeal No.35/2006.

03.08.2006

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS, J.

Mr. Vineet Kumar Mathur for the appellant.

The respondent assessee is engaged in the business of cutting and polishing marble granite tiles. Proceedings against the assessee had been taken under the Central Excise Act, 1944 for levy of duty on manufacture of polished granite tiles from granite blocks. By treating it to be a manufacturing activity upon the finding that the respondent assessee had removed certain quanity of the product of polished granite tiles clandestinely, apart from levying the duty on the estimated tiles alleged to have been manufactured out of the granite slabs, penalty proceedings was also initiated and penalty was levied against the respondent assessee. In its order passed on 21.03.2005 arising out of levy of excise duty the Tribunal held that no duty was leviable; and, in view of the aforesaid finding, in the appeal, levy of penalty was also set aside as the levy of duty itself was not sustainable. The present appeal arises out of the order of Tribunal dated 30.05.2005 setting aside the order of penalty.

The period to which this dispute relates is prior to the amendment effected in the Central Excise Act with effect from 01.03.2005. In view of the recent

decision of the Supreme Court in Aman Marbles & Granites' case, cutting and polishing of the raw stone slabs into polished tiles has been held to be not an activity of manufacture at all, therefore, the conversion of granite blocks and slabs into polished tiles is not even within the purview of 'manufacture of an artivcle' so as to invite application of the Central Excise Act, 1944.

In view of the authoritative pronouncement of the Supreme Court, once the activity of conversion of stone blocks into other useful shape of stone tiles has been found to be not a manufacturing activity and thus not subject to levy of excise duty at all, the question of entering into merit whether the assessee has been able to explain the incoming of the granite blocks and slabs and outgoing of the polished tiles becomes of little relevance when the activity does not at all fall within the purview of the manufacturing activity keeping it out of any levy of excise duty, we are of the opinion that no substantial question of law arises in this appeal.

The appeal fails and is hereby dismissed.

(Gopal Krishan Vyas)J. (Rajesh Balia) J.

Ojha, a.

D.B. Other Tax Ref. Case No.02/2005.

29.08.2006

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS, J.

Mr. Vineet Kumar Mathur for the Union of India.
Mr. Sanjeev Johari for the non-applicant.

Connect this case with D.B. Tax Appeal No.13/2005, Union of India Vs. Hindustan Processors and list alongwith the said appeal on 04.09.2006.

(Gopal Krishan Vyas) J. (Rajesh Balia) J.

Ojha, a.

D.B. Income Tax Appeal No.102/2005.

29.08.2006

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS, J.

Mr. Rajendra Mehta for the appellant.
Mr. Sangeet Lodha for the respondent(s).

Learned counsel for the parties seek time to find out the outcome of application moved under Section 254 (2) of the Income Tax Act, 1961 which was pending before the Tribunal.

Put up after four weeks as prayed.

(Gopal Krishan Vyas) J. (Rajesh Balia) J.

Ojha, a.

D.B. Civil Writ Petition No.4544/2006.

29.08.2006

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS, J.

Mr. Pushpendra Singh for the petitioner.

This matter concerns the pursuit of the personal matter of the petitioner for seeking admission to LL.B. Course vis-a-vis the policy laid down by the Bar Council of India. It cannot be entertained as a cause in the public interest.

The matter be listed before the Single Bench.

(Gopal Krishan Vyas) J. (Rajesh Balia) J.

Ojha, a.

D.B. Civil Contempt Petition No.204/2006.

29.08.2006

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS, J.

Mr. Mukesh Rajpurohit for the petitioner.

Put up before another Bench of which Justice Gopal Krishan Vyas is not a member.

(Gopal Krishan Vyas) J. (Rajesh Balia) J.

Ojha, a.

D.B. Spl. Appeal No.4715/2006 (DR-J).

29.08.2006

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS, J.

Mr. J.P. Joshi for the appellant.

Issue notice of the application under Section 5, Limitation Act as well as application seeking leave to appeal.

(Gopal Krishan Vyas) J. (Rajesh Balia) J.

Ojha, a.

D.B. Civil Misc. Appeal No.1176/2003.

28.08.2006

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS, J.

Mr. Rakesh Arora and Mr. K.R. Bhati for the appellant.
Mr. Pradeep Shah for the respondent.

This is an appeal against order of the Family Court, Udaipur dated 28.04.2005. The learned Judge, Family Court has rejected the application of the appellant-husband moved under Section 13 of the Hindu Marriage Act, 1955 for dissolving his marriage with respondent-wife Smt. Rajani by a decree of divorce on the ground on the ground that his wife respondent has treated with such cruelty that it is not reasonably possible to live with her; and, also, on the ground of desertion by the respondent of her matrimonial home without any reasonable cause.

Having admitted the appeal, we directed both the parties to remain present at the time of hearing so that efforts for reconciliation can be made. In pursuance of the order dated 26.07.2006, both the parties are present in the Court. Respondent wife is accompanied by her father in the Court. During the course of reconciliation, both the parties showed their unwillingness to live together and willingness for dissolving their marriage by a decree of divorce by consent in furtherance of which an application has been moved duly signed by both the parties and verified by Registrar (Administration) of this Court,

stating that the parties have amicably settled their disputes and they want separation and live peacefully and there remains no dispute between the parties regarding maintenance and other alimony. The parties have prayed that a decree of divorce may be passed in view of the settlement arrived at in between the parties.

In the light of the discussion held with the parties, we are satisfied that their matrimony has broken down irretrievably and it is no longer possible to regain matrimonial concord and both the parties have decided to dissolve the matrimony. In the circumstance, we deem it just and proper to allow this appeal and set aside the judgment and decree passed by the Family Court, Udaipur. Accordingly, the application is allowed.

As a sequel to it, this appeal is allowed and the judgment and decree dated 28.04.2005 passed by the learned Judge, Family Court, Udaipur is set aside and we pass order for dissolving the marriage between appellant Rohit Parihar and respondent Smt. Rajani by a decree of divorce by consent.

(Gopal Krishan Vyas) J. (Rajesh Balia) J.

Ojha, a.

D.B. Civil Writ Petition No.669/2006.

28.08.2006

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS, J.

Mr. Girish Joshi for the petitioner.
Mr. Mahesh Bora and Mr. Kamal Dave for the respondents.

Learned counsel for the Union of India is directed to get the record of examinations concerning the papers which have been circulated on different dates on which examinations for selection were held and the enquiry, if any, conducted before passing the impugned order cancelling the examinations and report, if any, in respect thereof.

Put up on 07.09.2006.

(Gopal Krishan Vyas) J. (Rajesh Balia) J.

Ojha, a.

D.B. Civil Writ Petition No.5555/2003.

29.08.2006

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS, J.

Mr. Anjay Kothari for the petitioner.
Mr. R.P.S. Choudhary for the respondents.

Learned counsel for the respondent State states that it has submitted a report today. That may be placed on file and the matter be listed for orders on the same.

(Gopal Krishan Vyas) J. (Rajesh Balia) J.

Ojha, a.

D.B. Civil Writ Petition No.1982/2005 (DR-J).
(Om Prakash Vs. State of Rajasthan & Another)

29.08.2006

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS, J.

Mr. R.K. Gaur for the petitioner.

We have perused the office objection. We find that the caption on the cover mentioned as "D.B. Civil Writ Petition" is wrongly recorded. In fact, this is an application seeking clarification that in terms of the order passed by this Court on 04.05.2004 by way of interim relief the impugned demand was stayed provided the petitioner deposited 50% of the amount of penalty levied and furnished a security to the satisfaction of the Commissioner Excise, Udaipur for the payment of the balance amount, however, the insistence by the Excise Commissioner, Udaipur on furnishing bank guarantee only as security is not justified since the Court has not directed to furnish bank guarantee.

In fact, the application was filed in 2004 and due to pendency and defects the matter has not been so far attended to. Meanwhile, the writ petition itself has been dismissed by a Division Bench of this Court on 18.03.2005. As the writ petition itself has been dismissed the interim order is no longer in existence and, consequently, this application has become

infructuous.

The application is accordingly dismissed as having become infructuous.

(Gopal Krishan Vyas) J. (Rajesh Balia) J.

Ojha, a.

D.B. Civil Writ Petition No.4726/2006.

29.08.2006

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS, J.

Mr. Sanjeev Johari for the petitioner.

Learned counsel for the petitioner states that matter relates to challenge to the entry tax and identical matters have been admitted and the same are pending consideration before this Court.

Admit. Issue notice.

Issue notice of the stay petition. Meanwhile, no coercive process be used against the petitioner by the State for enforcing demand created under Rajasthan Tax on Entry of Goods into Local Areas Act, keeping in view the decision of the Hon'ble Supreme Court in Jindal Stainless Ltd. Vs. State, 2006 (4) J.T. 611.

Connect with D.B. Civil Writ Petition No.3884/2006.

(Gopal Krishan Vyas) J. (Rajesh Balia) J.

Ojha, a.

D.B. Civil Spl. Appeal No.1594/2006 (DR-J).

29.08.2006

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS, J.

Mr. L.R. Upadhyay, Addl. G.A.
Mr. M.S. Singhvi for the caveator.

The case be listed after showing the name of Mr. M.S. Singhvi, learned counsel for the caveator respondent. Learned counsel for the appellant shall furnish a copy of the application and memo of appeal to the learned counsel for the caveator.

(Gopal Krishan Vyas) J. (Rajesh Balia) J.

Ojha, a.

D.B. Spl. Appeal (Writ) No.372/2006 (DR-J).

29.08.2006

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS, J.

Mr. C.P. Soni for the appellant.

No one appears for respondents No.2 to 5 whom notices were issued.

The appeal preferred is barred by 27 days. Having perused the application and heard the learned counsel, we are satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. Accordingly, the application is allowed. Delay in filing the appeal is condoned.

Let the appeal be regularly registered and listed for hearing.

(Gopal Krishan Vyas) J. (Rajesh Balia) J.

Ojha, a.

D.B. Civil Spl. Appeal No.438/2003.

29.08.2006

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS, J.

Mr. M.S. Singhvi for the petitioner.
Mr. R.K. Soni for the respondents.

Learned counsel for the respondent states that the appeal filed by the present appellant at Jaipur Bench bearing No.985/1997 has since been decided and, therefore, this appeal has become infructuous as the rights of the appellant shall be governed by the decision in his own appeal.

It is stated by both the learned counsel for the parties that this appeal may also be disposed of in the light of the bench decision rendered in D.B. Civil Spl. Appeal (Writ) No.857/97, Rajpal Singh & Others Vs. Director, Gramin Vikas and Panchayati Raj Vibhag, Jaipur and other connected cases, decided on 13.05.1998 by the Jaipur Bench including the appeal referred to by the appellant in para 9, as it governs the controversy raised in this appeal.

Accordingly, this appeal is disposed of in terms of the final order passed in the aforesaid appeal.

(Gopal Krishan Vyas) J. (Rajesh Balia) J.

Ojha, a.

D.B. Civil Spl. Appeal No.889/2005 (DR-J).

29.08.2006

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS, J.

Mr. N.L. Joshi for the appellant.
Mr. S. Johari for the respondent.

Last opportunity is given to learned counsel for the appellant to produce the copy of the “Punjab Kesari” in which the notices of respondents No.1 and 2 were published which were given 'dasti' to the learned counsel within six weeks. If the copy is not produced within six weeks the appeal shall stand dismissed automatically without reference to the Court.

(Gopal Krishan Vyas) J. (Rajesh Balia) J.

Ojha, a.

D.B. Civil Spl. Appeal No.18/2004.

29.08.2006

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS, J.

Mr. S. Sankhla for the appellants.

One week time is allowed to deposit initial charges and preparation of paper book.

(Gopal Krishan Vyas) J. (Rajesh Balia) J.

Ojha, a.

D.B. Criminal Contempt Petition No.08/2005.

29.08.2006

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS, J.

Mr. L.R. Upadhyay, for the petitioner.
Mr. J.P. Joshi, with
Mr. M.C. Bhoot, for the respondents.

Put up on 12.9.2006 as prayed.

(Gopal Krishan Vyas) J. (Rajesh Balia) J.

Ojha, a.